

1 likely be able to agree on that, but it sort of shortened the  
2 time frame. If parties aren't able to agree by the 14th, that  
3 we just submit each side's version of a draft confidentiality  
4 agreement and the Court can either decide for itself or can  
5 have a short telephonic hearing as to which one is preferable.

6 THE COURT: I'm just going to make a decision.

7 MR. FINCH: We would submit -- if we can't agree by  
8 the 14th, then the ACC and FCR will submit their version.

9 THE COURT: I'm going to pick one or the other.  
10 Take your best shot at what you feel you need and if you're  
11 wrong, I'll pick the other one, but it just gets too  
12 cumbersome. You can go on forever and deal with these issues.  
13 I'll make a judgment. I'll look at both sides. Hopefully,  
14 you'll agree. Confidentiality is not something that is meant  
15 to be overly onerous, and if a party is receiving confidential  
16 information, clearly, you have to have a way to protect it.  
17 And if it needs to be disclosed, you come back to court. If  
18 somebody wants to disclose it outside of the confidentiality  
19 parameters, they come back to court.

20 MS. PARVER: Your Honor, just a question for  
21 clarification. The draft orders or the proposed orders that  
22 you are envisioning, are they an overall confidentiality order  
23 which may or may not contain special provisions for Social  
24 Security and earnings information, or are you just envisioning  
25 before it goes out that the special --

1 THE COURT: It's going to be specific to the  
2 information being obtained to the questionnaire. Ultimately,  
3 there may be another confidentiality that may cover other  
4 things, but I want this information protected before that  
5 questionnaire goes out.

6 MS. PARVER: Thank you, Your Honor.

7 THE COURT: So it's just really whatever needs to  
8 be confidential as to this document. Hopefully, you can agree  
9 on it. It doesn't seem to me that it's something that should  
10 be of great dispute between the parties.

11 MR. DEVEREAUX: We'll certainly do that, Your  
12 Honor.

13 THE COURT: Okay.

14 I think we need to take a break now. We're going  
15 to come back. I have part two, Paragraph 9, 10, 11, 12 --  
16 what I would like you to do, you're going to be meeting and  
17 conferring, just make sure on that other language that we've  
18 talked about that everybody has. And I understand people  
19 still have objections, but having heard my ruling on what  
20 would be permissible, preserve your objections to the  
21 questionnaire, but if you can agree that the language reflects  
22 what the Court has ordered, that's what I would be expecting  
23 you to come back with. So we're going to take a break for 45  
24 minutes and then we'll be back and we'll have one hour left to  
25 go through this.

1 (Whereupon, there was a brief recess in the proceedings.)

2 THE COURT: I'm going to ask that each person when  
3 you speak, slow down because I think as you start to talk, it  
4 gets faster and it's makes it almost impossible for the court  
5 reporter to make an accurate record. So, please, go slowly.  
6 If the court reporter has any difficulty, just make a signal  
7 and then we'll know that you've got to slow down.

8 MR. DEVEREAUX: I will, Your Honor. I will ask her  
9 to do that. It will help me as well.

10 So, over the lunch hour, Your Honor, we did craft  
11 during the meet and confer some language as to Instructions 6B  
12 and 6C that I think will meet some of the concerns that the  
13 ACC had expressed and that Your Honor expressed. I can read  
14 that into the record.

15 THE COURT: Why don't you do that.

16 MR. DEVEREAUX: 6B will now read: If in Part 2 you  
17 state that the injured party has been diagnosed with lung  
18 cancer or other cancer, submit originals of the most recent  
19 radiographic evaluation, such as, x-ray or CT scan, taken  
20 before the filing of your claim, and copies of any and all  
21 medical records that were relied upon or conflict with the  
22 alleged diagnosis, including but not limited to: -- and then  
23 the same list Your Honor -- the bullet points that appear  
24 under C.

25 6C in the instruction section will read: If in

1 Part 2 you state that the injured party has been diagnosed  
2 with pleural plaques, diffuse pleural thickening, asbestosis  
3 or any other nonmalignant asbestos-related condition, submit  
4 originals of the most recent radiographic evaluation, such as,  
5 x-ray or CT scan taken before the filing of your claim, and  
6 copies of any and all medical reports and records that were  
7 relied upon or conflict with the alleged diagnosis, including  
8 but not limited to: -- and then the same list of subparts.

9 THE COURT: Okay.

10 MR. DEVEREAUX: That, I think returns us to Part  
11 2.9A, Your Honor.

12 THE COURT: Yes.

13 MR. DEVEREAUX: 2.9A certainly can't be argued to  
14 be burdensome. It's one box that asks if they were diagnosed  
15 with any of the particular lung conditions that we list in  
16 that section.

17 The ACC's argument is they have nothing to do with  
18 asbestos diseases. Experts that we talked to say, yes, they  
19 do. For example, congestive heart failure is fluid in the  
20 lining of the lungs that on x-ray can mean staging for an  
21 asbestotic condition. That's what our experts say. Another  
22 expert's estimation says our experts are wrong, but as far as  
23 potentially developing admissible evidence in a nonburdensome  
24 way, I don't see the objection.

25

1           MR. FINCH: Your Honor, the objection is not as to  
2 burden. It is as to except for idiopathic pulmonary fibrosis  
3 and silicosis, none of the other diseases are inconsistent  
4 with the diagnosis of asbestosis. I agree with Mr. Devereaux  
5 that in evaluating an individual particular claim, a doctor  
6 might -- you might use the fact that someone has asthma or  
7 pneumonia or COPD, chronic obstructive pulmonary disease, in  
8 challenging the credibility of the plaintiff's doctor's  
9 diagnosis, but it, again, is the type of individualized,  
10 particularized inquiry that I don't think leads to admissible  
11 evidence for the purpose of a global estimation.

12           MR. DEVEREAUX: That's an argument.

13           THE COURT: I've already determined that the party  
14 that's requesting the information is going to get a fair  
15 chance to get what they believe is relevant, unless it doesn't  
16 bear any relationship whatsoever to the matter at hand. And I  
17 think, particularly, because part B asks to identify the lung  
18 condition, if you're correct that several of these don't  
19 apply, you'll be able to bring that to the Court's attention  
20 if they're going to try to rely on a response to this question  
21 in assessing the estimation. So that would be permitted.

22           No. 10.

23           MR. FINCH: I think 2.10 through 2.12 were subsumed  
24 by the Court's prior ruling. I think you understand my  
25 objection, but I understand I have been overruled.

1           THE COURT: What is the next one that the Court  
2 would make a ruling on?

3           MR. DEVEREAUX: Part 3, Smoking History of the  
4 Injured Party found on Page 10 of the questionnaire. This has  
5 been approved in the Grace case, for obvious good reasoning.  
6 Smoking is by far the largest cause of lung cancer in this  
7 country. If someone has been a smoker, it impacts both an  
8 analysis of causation and the evaluation of the claim.

9           The smoking is also the largest cause of -- one of  
10 the single largest causes of nonmalignant lung disease. In  
11 the ACC's objection, they say, quote, smoking is irrelevant to  
12 causation for mesothelioma and nonmalignant asbestos diseases.  
13 We agree on mesothelioma, and that's why the instruction to  
14 the question says if you're a mesothelioma claimant, don't  
15 fill this out.

16           For the nonmalignant asbestos diseases, nothing  
17 could be further in the truth. Smoking causes all sorts of  
18 lung problems that aren't cancer in and of themselves. So,  
19 smoking is obviously a huge issue for us to know about, as are  
20 the use of cigars, pipes and smokeless tobacco. We will and  
21 have in the past, Your Honor, had claims of laryngeal and  
22 upper GI tract cancers that will be part of this estimation as  
23 well. Cigars, pipes, smokeless tobacco are also causes of  
24 those. It's information that clearly we can and would want to  
25 develop for our expert estimation case.

1 MR. FINCH: Your Honor, I continue to stand on my  
2 objection, but believe it is likely been overruled.

3 THE COURT: It has. But it will be reflected on  
4 the record that you did object.

5 The next thing is product exposed to, Page 11.

6 MR. DEVEREAUX: I believe 4.3, Mr. Finch did talk  
7 about issues that the Court's prior indications have  
8 already -- prior rulings have already addressed. I think 4.3  
9 was one of them.

10 MR. FINCH: That's correct. I stand on the earlier  
11 objection, but understood to have been overruled as to the  
12 4.3.

13 THE COURT: Thank you.

14 MR. DEVEREAUX: So the next then, Your Honor, is  
15 4.7A and B on Page 12. This relates to a particular set of  
16 questions regarding the exposure, the types of exposure and  
17 frequency of exposure that a claimant would have or claims to  
18 have experienced.

19 What it does, this entire questionnaire, we've  
20 tried to make it, to the extent it can be, a box-checking  
21 exercise so that it is easy both to input analyze and can't  
22 lead to lots of debates as to what people did or didn't mean  
23 when they wrote things. And there are different levels of  
24 exposure, who worked directly with a US Gypsum product as  
25 opposed to people who never worked with the product but were

1 at a building site where the product was in use. And that is  
2 the disjunctive choice, A, B, C or D, that has made -- is made  
3 in the exposure type. And then we ask them to tell us the  
4 range of dates for exposure and the frequency of exposure.  
5 And Mr. Finch at the break showed me a Manville claim form  
6 that I think he's going to propose at least part of as a  
7 substitute for this. I haven't had a chance to look at it and  
8 don't have a copy up here with me, but the one thing I do note  
9 is the Manville claim form uses the exact same approach of a  
10 disjunctive description of are you the person who worked  
11 directly with it, or were you next to somebody, and so it's  
12 sort of something plaintiffs' lawyers are familiar with as a  
13 way of gathering information.

14 MR. FINCH: My only objection to this section, Your  
15 Honor, is that the frequency of exposure during the date  
16 ranges, days per month, hours per day, I would suggest there  
17 should also be a box that says "unknown" because if you think  
18 about the typical worker, he may well recall working with  
19 Durabond, which is USG's most common asbestos joint compound,  
20 he may say, well, I know I worked with this over the course of  
21 my career, but to try to estimate how many hours per day and  
22 days per month is impossible. And one proper response in  
23 interrogatory answers is I don't know, or I don't recall, but  
24 I do know I'm certain I worked with Durabond, I worked with it  
25 fairly frequently, I was in close proximity to it, but to



1 break it down to days per month and hours per day, I don't  
2 think -- without having something that allows people to say I  
3 don't know, it's a problem.

4 MR. DEVEREAUX: Your Honor, I appreciate the issue.  
5 I guess that I would propose then to insert an instruction,  
6 like you would do in such a deposition where you would say  
7 that the debtor is entitled to your best estimate, if you are  
8 unable to provide an estimate, then you can check "don't  
9 know." I don't want to make it a situation where just because  
10 it's easy, people check a box.

11 THE COURT: I think what you could do is you could  
12 have another box there that would say "other" and under it  
13 say, estimate aggregate exposure. I think you can either do  
14 it by hours or days.

15 MR. DEVEREAUX: We'll do that, Your Honor.

16 THE COURT: Then they can just write in the number.

17 MR. DEVEREAUX: I think that takes us on the same  
18 page to 4.8: Description of injured party's job duties. It's  
19 not asking for any lengthy recitation of what they did and I  
20 think the objection is it's -- to use occupational codes, some  
21 occupational codes do give you quite a precise idea of what  
22 people did, some aren't so. If someone was a laborer, you're  
23 not exactly sure if they were laboring, loading and unloading  
24 bags of asbestos, if they were laboring sweeping up after  
25 construction crews, or in some other way, so it's not a

1 burdensome question. It may, in fact, add and will add  
2 additional information that will be helpful and for that  
3 reason, we don't believe it is duplicative.

4 MR. FINCH: Your Honor, with that explanation at  
5 least I would withdraw the objection Section 4.8.

6 This sort of actually raises an issue as to the  
7 questionnaire. The box there is not particularly large. One  
8 of the things that I think should be required in the order is  
9 that people can take this questionnaire and create it  
10 electronically so if they need to type in more information or  
11 they can cross reference the deposition or interrogatory, they  
12 are going to have the space to do it. I don't think  
13 Mr. Devereaux is suggesting people can fill this out in pen  
14 and ink. So they can type it in so they can submit to Rust  
15 something that is more user friendly.

16 THE COURT: You can put an asterisk, or it should  
17 go in the instructions to say, if there's insufficient space  
18 to complete an answer, please attach an addendum page.

19 MR. FINCH: What I'm getting at --

20 THE COURT: I understand. But if it's done  
21 electronically, then you wouldn't need to do that because it  
22 would just open it up.

23 MR. FINCH: It will make it bigger. Because I  
24 think that in terms of obligations of a party responding to  
25 discovery, there's no difference between sending it in hard

1 copy --

2 THE COURT: I would assume they would want to send  
3 it electronically.

4 MR. FINCH: Yes, if that's possible. If you think  
5 about it, the average file might be a foot thick of paper,  
6 it's interrogatory answers, depositions, some medical records  
7 and the questionnaire, it will be less, I think, burdensome on  
8 everyone if instead of having to copy a foot thick of stuff to  
9 mail it to Rust, if people would submit the electronic  
10 equivalent of that on a CD-Rom, the order needs to reflect  
11 that.

12 THE COURT: Can you put that in the instructions?

13 MR. DEVEREAUX: We can, Your Honor.

14 MR. FINCH: So people can take the questionnaire,  
15 copy it electronically and then electronically attach whatever  
16 documents they wish.

17 THE COURT: You need something in the instructions  
18 to say if you have received this electronically -- they can't  
19 send it to somebody if they don't have the electronic address  
20 to send it.

21 MR. FINCH: They can send it into Rust in one of  
22 two ways, Rust may or may not be capable --

23 THE COURT: I'm talking about getting it to them.

24 MR. FINCH: Getting it to the claimants; they can  
25 send either a hard copy to claimants, or if the claimants got

1 something like this, they could scan it and create the  
2 electronic version of the document, send back electronic  
3 documents either to hard copy form, or I would suggest in  
4 electronic form, if that's what they wanted to do as well.  
5 The issue is making it so that whatever is the most user  
6 friendly for both the plaintiff law firms and for Rust --

7 THE COURT: I think coming in digitally,  
8 electronically would be easier for everyone.

9 MR. DEVEREAUX: That would be great.

10 THE COURT: Why don't you create an instruction  
11 that says, if you have the electronic means, you must submit  
12 this form electronically, give the address where you want it  
13 to go, except for I think it would be the x-rays you can't  
14 send in that way, or maybe you can today, if they're  
15 maintained --

16 MR. FINCH: I don't know the answer to that.

17 MR. DEVEREAUX: If they're digital, they can.

18 MR. FINCH: The rest of it -- I think for quality  
19 control purposes, Rust should send a hard copy, how many  
20 questionnaires to each -- let's say a law firm has 20 of these  
21 to fill out, Rust should send a hard copy, if the law firm  
22 says, hey, can you send it to me electronically, Rust should  
23 do that.

24 THE COURT: I think what we should do is we should  
25 have them send a disk with the questionnaire on it.

1 MR. DEVEREAUX: What I was going to propose, Your  
2 Honor, I have to talk to them, you can simply put in the  
3 instruction a link, if you would like to access this  
4 questionnaire electronically, log onto rust.com and there it  
5 is on the USG, the questionnaire. I'm not the most technical  
6 person in the world, but I think something like that is  
7 probably well within their means.

8 THE COURT: That would be good.

9 MR. FINCH: As long as it's clear to people if they  
10 want to, they can send it back to Rust on a CD-Rom.

11 THE COURT: Or electronically. Talk with Rust and  
12 see what is the best way to approach this and then put in an  
13 instruction as to how they can file it electronically.

14 MR. DEVEREAUX: I will, Your Honor.

15 MR. FINCH: My fear if you say they only have to  
16 submit it electronically, A, some plaintiff law firms may not  
17 be as technologically --

18 THE COURT: I didn't say that. I said if they  
19 wanted to, they could send it in electronically.

20 MR. FINCH: Thank you, Your Honor.

21 MR. DEVEREAUX: The next item that remains in  
22 dispute is 4.10, again, on Page 12 of the questionnaire.

23 This asks for those individuals who worked in  
24 construction, the percentage of time that they worked in  
25 commercial --

1 THE COURT: What would be the relevance of this?

2 MR. DEVEREAUX: The expert will tell you that tasks  
3 are sequenced in commercial and residential so the foundation,  
4 the framing, they actually go in in different sequences and  
5 the likelihood of percentage overlap -- so, for example, one  
6 of our major asbestos-containing products is joint compound,  
7 and there's a question of what trades could or would be in  
8 proximity to those operations when they're going on. It's a  
9 slightly different answer if it's residential or commercial,  
10 and that's why it's relevant.

11 THE COURT: Is it only relevant for that one  
12 product?

13 MR. DEVEREAUX: No. No. Any construction product.  
14 Any construction product.

15 MR. FINCH: Your Honor, again, I think this is an  
16 objection which may have been subsumed by the Court's earlier  
17 ruling, but it is such a particularized inquiry.

18 THE COURT: Why don't you say "estimate" the  
19 percentage of time.

20 MR. DEVEREAUX: Next is an objection related to I  
21 guess Part 5 of the questionnaire and this is a request in  
22 form or format asking the claimants to identify other  
23 nondebtor asbestos-containing products that they were exposed  
24 to. And the need for this information, which has also been  
25 approved in the Grace case, is being collected by the

1 claimants in any event and is part of standard discovery in  
2 every personal injury asbestos case is -- I would say almost  
3 obvious, that if to the extent claimants have spent a lifetime  
4 exposed to other non-USG products and come in making a claim  
5 in this bankruptcy, and do so reporting a history of exposure  
6 to US Gypsum products that involves home remodeling that they  
7 did in 1967, there are very good grounds both for  
8 apportionment of damages and a termination of the aggregate  
9 liabilities for those types of claims as to whether or not  
10 US Gypsum under that kind of scenario, how many of those  
11 scenarios do we find out of 2,000, whether or not they, in  
12 fact, are substantial factors in a legal sense. And so that  
13 is the basis on which we request information.

14 MR. FINCH: Your Honor, again, the fact that a  
15 claimant may have been exposed to other defendants' products  
16 or even primarily to other defendants' products is not a  
17 defense for USG. And I still think it's impossible for any  
18 expert to offer admissible testimony that, well, this  
19 particular plaintiff because he was exposed to Manville  
20 products for 20 years and USG products for ten days doesn't  
21 have a valid claim against USG and I don't --

22 THE COURT: I think it goes to the validity of the  
23 claim, maybe to the value of the claim. I'm not here to say  
24 claimant A has no valid claim. It's a question of what value  
25 you might assign to that claim. This would be relevant to

1 that, at least for them to make an argument.

2 MR. DEVEREAUX: Certainly would.

3 MR. FINCH: Well, Your Honor, it would be relevant  
4 to the value of the claim against USG if there were going to  
5 be a jury to report damages. If instead you're going to look  
6 at some method of valuing the claim, whether it's the judgment  
7 history or the USG's judgment history in USG's settlement  
8 history, then the fact that --

9 THE COURT: That would be relevant to looking at  
10 for settlement purposes.

11 MR. FINCH: It wouldn't be -- there are plenty of  
12 cases where plaintiffs obtain judgments against defendants  
13 even though they had significant exposure to lots of other  
14 defendants' products who they settled out with earlier, and  
15 that's not relevant to the validity or the amount of recovery  
16 they obtained from the defendant they ultimately went to trial  
17 with. So, again, I stand on the relevance objection.

18 THE COURT: Unless there's a jurisdiction that  
19 would allow them to have some apportionment, or if you're  
20 talking about settlement value --

21 MS. PARVER: Your Honor, if I could just point out,  
22 the debtors in reply papers say that they're asking you to  
23 make determinations as to the validity or they're making  
24 determinations based on the information presented in the  
25 questionnaires and the records as to the validity of the



1 sample claims and that -- I'm referring to Page 7, the last  
2 paragraph on that page of the debtors' reply papers, after  
3 these determinations as to the validity of the sample claims  
4 were made, debtors' expert statistician will predict taking  
5 into account the appropriate margins of error, what percentage  
6 of the total claimant population in each disease category has  
7 and does not have the characteristics of a valid claim. So  
8 that I don't think, Your Honor, that they are asking you to do  
9 this just in terms of what the value of a claim may be. The  
10 debtors' own papers seem to say that they are asking you --

11 MR. FINCH: They're asking you to make  
12 determination that because somebody was exposed predominantly  
13 to lots of other products, they don't have a valid claim  
14 against USG.

15 THE COURT: I'm not going to make that finding on  
16 any particular basis. There may be a range and any time you  
17 do an estimation, it's not an exact science, as I understand  
18 it. And what I'll be doing is looking at the various  
19 positions the parties have and trying to create the range of  
20 values that will be appropriate, and then to ultimately set  
21 the value based on what I feel the appropriate range would be.  
22 And in that you have to take in the weight of the arguments,  
23 the terms of validity, nonvalidity, and try to come up with  
24 what is an appropriate estimate, to the extent I have the  
25 facts to do it, so it's not a claim-by-claim basis?

1 MR. DEVEREAUX: We're not proposing and we won't  
2 put on evidence on a claim by claim basis, we will talk about  
3 characteristics and that's a broad or in the aggregate issues  
4 that you'd look at and it's not individual claim information.

5 THE COURT: The more compelling argument is going  
6 to be whether or not there are any of these claims that will  
7 fall within the fraudulent type category that is being seen  
8 around the country. That's a little easier to ascertain if  
9 the facts support it.

10 MR. FINCH: Your Honor, I still fail to see how the  
11 relevance of other exposure information for an aggregate  
12 information -- USG's settlement history is claims people filed  
13 against it where they also filed claims against lots and lots  
14 of other --

15 THE COURT: I may totally discount what they have  
16 to say, but they have a right to make a record of what their  
17 position is because if it goes up on appeal, I can be second  
18 guessed, perhaps I'm wrong. I'll do my best to be right here.  
19 But they have to have a right -- they have a right to make  
20 their case and then I'll judge the facts and the opinions when  
21 they come in and make a determination. But if they don't get  
22 an opportunity to pull the information together and make their  
23 case, then their ability to appeal from my decision is gone,  
24 and it will be gone forever. I'm not going to -- I thought I  
25 made that clear at the last hearing -- I am not going to cut

1 off a party's opportunity to make their case. I'll consider  
2 other issues, burdens, confidentiality, those types of things,  
3 but this is the view that they have about the nature of the  
4 discovery that they need, why they need it. They have a  
5 reason. I may not give that reason any weight, they may be  
6 unavailing in their arguments to this Court, but they're going  
7 to get an opportunity to make their case.

8 MR. FINCH: I will stand on my objection for Part 5  
9 and I understand it to be overruled.

10 THE COURT: Thank you.

11 MR. DEVEREAUX: Part 6, Your Honor, I believe  
12 remains in dispute. It's a request by the debtors in the  
13 questionnaire for the employment history of the claimants,  
14 it's requested -- well, we ask them when and where and what  
15 they were doing when they were exposed to asbestos-containing  
16 products. We also asked them their occupational history  
17 because they may well not know that certain occupations, jobs  
18 and industries in this country have been heavily exposed to  
19 asbestos-containing products in the time frame that they were  
20 working and, therefore, under the same point of being able to  
21 get a full profile, their asbestos-containing history or  
22 exposure history, we ask this question. I don't think it's  
23 burdensome, but that's the dispute.

24 MR. FINCH: Your Honor, if the occupational history  
25 were limited to occupations in industrial trades, I would

1 understand the relevance. But, for -- this is broader than  
2 that. It can pick up any potential occupation that anybody  
3 ever had. Let's say somebody worked construction for one  
4 summer and then they went and got a job as an engineer or  
5 something, or an accountant or something not an industrial job  
6 and changed jobs 20 times, I believe that is burdensome and  
7 not relevant. So if it's limited to industrial occupations, I  
8 could see the relevance of that. And I would suggest also  
9 that if they're going to get the Social Security work history,  
10 Part 6 is subsumed by that anyway.

11 MR. DEVEREAUX: That might be acceptable. I'm  
12 concerned that by limiting it to industrial occupations, that  
13 we --

14 THE COURT: You have to define what you mean.

15 MR. DEVEREAUX: I don't know what that even means  
16 right now. That doesn't mean that it couldn't be a  
17 satisfactory definition, but I'm not sure what it is, or if  
18 it's generally accepted.

19 THE COURT: Do you have a definition you'd like to  
20 proffer?

21 MR. FINCH: In any of the occupations listed on the  
22 attachment to their questionnaire.

23 MR. DEVEREAUX: I don't think that's a fair  
24 description of industrial. The occupations have a big  
25 category called "other" and it's there for a reason. This

1 isn't an exhaustive list of every occupational or industrial  
2 occupation that exists. That's what the other category is  
3 for.

4 MR. FINCH: I will stand on my objection, but I do  
5 think it is --

6 THE COURT: If there's a way to refine it, but I  
7 have to have some suggestion so everyone will understand what  
8 it means. If you have to list your entire work history, then  
9 you have to list your entire work history, but if you want to  
10 narrow it down, I need to have some definition that would be  
11 really understood.

12 MR. DEVEREAUX: And I've said this before, if there  
13 are -- they asked at the break whether it is acceptable to  
14 take a film original x-ray and turn it into a digital x-ray,  
15 is that acceptable for submission? I said, I'll ask an expert  
16 and if is says we can make that change, we don't have to  
17 involve the Court and the final questionnaire can reflect it.  
18 Again, with this kind of proposal I'm not saying no, I'm just  
19 saying I don't understand.

20 THE COURT: We'll leave it the way it is now. If  
21 there's a definition -- the more material you have, the harder  
22 it is to digest it. So if there's a way to narrow it down,  
23 I'm understanding that that debtors' counsel are willing to  
24 consider it. So if you have a phrase or a definition of a job  
25 that you feel should be included in here that can limit it,

1 present that to the debtor. If you can mutually agree, that's  
2 fine, if you can't, then we'll leave it the way it is.

3 MR. FINCH: I guess one way to reduce the burden  
4 would be if you're submitting Social Security work history,  
5 you don't need to complete this section.

6 THE COURT: Does the Social Security history -- I  
7 do Social Security appeals, I don't know that they show you  
8 the job that you had.

9 MR. DEVEREAUX: They don't.

10 THE COURT: I think they show you that you were  
11 working, but I don't know that they get specific to know what  
12 exactly you were doing, so you wouldn't know whether you were  
13 sitting in an office, or am I mistaken?

14 MR. DEVEREAUX: No. You're right. That's why we  
15 have requested both. We want to know certain things and  
16 that's the reason we asked for both of these. You'll get  
17 Social Security -- it will make up for instances where people  
18 genuinely don't recollect, and that will happen, but what it  
19 doesn't do, it doesn't tell you anything about what the --

20 THE COURT: Sort of a check to see whether or not  
21 if they didn't put anything down for the year 1970 and they  
22 had \$100,000 worth of income in that year, then you can say  
23 there's something not right. Is that the purpose?

24 MR. DEVEREAUX: Yes, that's right.

25 MR. FINCH: Given that, Your Honor, then we suggest

1 the Social Security work history is not relevant to this  
2 inquiry. It doesn't show anything about what they did, only  
3 that they were employed.

4 MR. DEVEREAUX: I think it will show where they  
5 were employed. It will be the best information that we have,  
6 and for that reason, it is relevant. It's not as good as  
7 someone who can tell me what they were doing and when, but  
8 it's what we will have, so it is clearly relevant.

9 MR. FINCH: I think if they're going to fill out  
10 Part 6, they shouldn't have to submit the Social Security  
11 questionnaire -- Social Security work history that would at  
12 least duplicate everything in Part 6.

13 THE COURT: I think what it does, if they have to  
14 get that, it will help them when they're preparing the form  
15 double check and refresh their recollection about certain  
16 jobs. So I think it's going to be of help to the plaintiffs  
17 as well as being a way to check their responses to see if  
18 they're valid.

19 MR. DEVEREAUX: Your Honor, I believe the next  
20 objection 7.1A. 7.1A asks whether an individual was exposed  
21 to asbestos outside of their occupation? And there are a fair  
22 number of claims that come in where individuals say, well, I  
23 wasn't exposed occupationally, but I was exposed in a variety  
24 of nonoccupational settings. I was sort of home remodeler who  
25 did my own work on my own home, not an occupation, or just on

1 weekends, or they were exposed to another individual who  
2 worked in construction who came home with dust all over them  
3 day after day after day. 7.1A is designed to get at the  
4 people, nonoccupational, who were exposed, and all it asks is  
5 check a box, yes, no. And if you say yes, just tell us the  
6 product. Tell us how you remember it was the basis of your  
7 claim, if it was a debtor's product. And if you're relying on  
8 another person for that basis, tell us about them. It's  
9 consistent with the other method of developing information on  
10 exposure. It's three questions, it's not burdensome and I  
11 think it should be allowed.

12 MR. FINCH: Your Honor, the objection goes to if  
13 someone is occupationally exposed to USG products, additional  
14 information about nonoccupational exposure seems to be  
15 cumulative and not relevant.

16 THE COURT: It may go to how you're going to value  
17 the claim, just like it would be if you were exposed to other  
18 companies' products on other job sites.

19 MR. FINCH: I stand on my prior objection but  
20 understand it to be overruled.

21 THE COURT: Thank you.

22 MR. DEVEREAUX: Your Honor, the next objection was  
23 to Part 7 generally.

24 MR. FINCH: I think that's an objection, basically,  
25 whatever Section 4 looks like, Part 7 will conform to it.



1 MR. DEVEREAUX: That's what I was going to say.

2 THE COURT: Yes. So that's where we're going to  
3 put in that other box to put in estimate.

4 MR. DEVEREAUX: Right.

5 Which brings us to Parts 8 and 9. I think we  
6 talked about these this morning at some length and this  
7 relates to other litigation and bankruptcy claims that the  
8 injured party or the source individual in Part 9 engaged in  
9 and monies they received as a result, and so, I'll simply  
10 refer to those comments.

11 MR. FINCH: Your Honor, as to Part 8, I stand on  
12 the earlier objection but understand the bulk of it to be  
13 overruled.

14 Focusing in on Part 8, Question 11, again, the  
15 relevance -- I object to the relevance of settlements with  
16 other defendants, but even if that is overruled, the  
17 settlements with other defendants broken out on a  
18 defendant-by-defendant basis, I think, is equally irrelevant.  
19 But also the other objection to it is that that kind of  
20 information would not ordinarily be discoverable even in an  
21 individual personal injury case. You might be able to get  
22 have you settled with anyone else and what is the aggregate  
23 settlement you have received from everybody. That would seem  
24 to me, under their theory, that could possibly be relevant to  
25 the value of the claim against USG if you're going to value

1 settlement and get a setoff. What difference does it make if  
2 they settle with Owens-Corning for \$200,000 and Manville for  
3 \$6,000 and Union Carbide for a million and a half dollars and  
4 they still have a claim against USG? Why does USG need to  
5 know the other defendants with whom they settled and the  
6 settlement amount for each defendant? That's going to lead to  
7 lots and lots of confidentiality objections not only from the  
8 claimants but probably from defendants out there in the tort  
9 system as well and/or insurance companies.

10 THE COURT: I think he has a point there about the  
11 confidentiality agreements, without dragging all those people  
12 into court so that they have an opportunity to be heard on it,  
13 I don't know how I can --

14 MR. DEVEREAUX: Your Honor, far from not being  
15 discoverable in most states, the information when settling --  
16 a co-defendant reached a settlement, they would have to  
17 apprise the remaining defendants in order to get a  
18 determination of a good faith settlement and extinguish any  
19 right to contribution of cross claims and so those -- this  
20 information is as a matter of course by law shared in most  
21 states. The confidentiality issues are handled two ways,  
22 one -- Judge Fitzgerald has already heard and overruled this  
23 objection as well, but that there be an application and a  
24 confidentiality order about we have been asked to disclose the  
25 following information, you can come and be heard and maybe we

1 should put in here that the disclosure will remain  
2 confidential within the context of the confidential order  
3 entered in the court. So there are ways that confidential  
4 information are handled and handled the most sensitive with  
5 Social Security numbers, but one isn't to deprive litigants of  
6 highly relevant information.

7 THE COURT: Why do you need, given all the  
8 complexities of this confidentiality, why do you need more  
9 than the number of defendants that they have settled with and  
10 the aggregate amount?

11 MR. DEVEREAUX: One of the points that the Court  
12 made this morning you want to know and one of the things that  
13 may form the estimation is to know what similarly situated  
14 individuals are in fact settling for, that the Court is going  
15 to want to have some parameters of what is reasonable for  
16 these types of claims. This is evidence that can well help  
17 the Court in making sure of that. So, it's clearly relevant  
18 in that setting.

19 MR. FINCH: Your Honor, you get that information by  
20 averages, even on their theory of the case. I mean the fact  
21 that somebody in one case settled, one claimant settled with  
22 Owens-Corning for \$500,000 or Owens Illinois for \$500,000,  
23 another for \$200,000, and each have collected \$2 million from  
24 other -- if you're going to require people to provide  
25 settlement information at all, I believe aggregate settlement

1 amounts are clearly sufficient, and once you start raising  
2 individual settlements with individual defendants, the fact of  
3 settlements may be disclosed in state court litigation, but  
4 oftentimes the amount is only disclosed to the Court and not  
5 to the other litigants. Many times the defendants have no  
6 idea what other defendants are paying to resolve a particular  
7 case. I think for all those reasons, in addition to the  
8 confidentiality concerns that this question is objectionable  
9 as framed.

10 MR. DEVEREAUX: Your Honor, one last comment.  
11 There is clearly extra utility and relevance in having  
12 information broken down the way the debtors requested. And  
13 the confidentiality concern is a red herring, frankly, in  
14 Judge Fitzgerald has ordered all the settlements for all  
15 118,000 claimants, most of whom are going to be claimants in  
16 this bankruptcy to already be produced, so if Owens-Corning or  
17 any other debtor in the asbestos tort world has a problem with  
18 their information being shared in the bankruptcy in a  
19 confidential way, that objection is going to be heard and  
20 raised already. There's no -- there's no additional issue  
21 here that's being created by this request. So I think it  
22 should be allowed.

23 MR. FINCH: That issue has not been raised by  
24 individual claimants who are bound by confidentiality  
25 agreements between Judge Fitzgerald --

1           THE COURT: What I'm going to do is I want you to  
2 rephrase this question and make it so that to provide the  
3 information, any of the information, if it's not subject to a  
4 binding confidentiality agreement or not otherwise made a  
5 matter of public record. And if it is a matter of  
6 confidentiality, then just to disclose the aggregate number of  
7 defendants that have settled with the gross amount of the  
8 settlement, the lowest amount paid in settlement, the highest  
9 amount paid in settlement, and so then you'll get a sense of a  
10 range, which is probably what you're looking for.

11           MR. DEVEREAUX: I think that's a good solution,  
12 Your Honor.

13           THE COURT: I'm just troubled, people will be  
14 running in and wanting to be protected with the  
15 confidentiality agreement and having other concerns. So, if  
16 you can make that a two-part question --

17           MR. DEVEREAUX: We will, Your Honor. That's a good  
18 suggestion.

19           10.2, regarding the Social Security work history, I  
20 believe you've already addressed.

21           THE COURT: Yes. But I want you to make an  
22 asterisk there to make it very clear that that information is  
23 only being provided under the confidentiality agreement.

24           MR. DEVEREAUX: I will, Your Honor.

25           THE COURT: And Rust and whoever else is going to

1 touch the information has to be bound by this confidentiality  
2 agreement.

3 MR. DEVEREAUX: And every expert in the case.

4 THE COURT: Absolutely.

5 MR. DEVEREAUX: We have nothing further, Your  
6 Honor.

7 THE COURT: Is that it?

8 MR. FINCH: That covers the contents of the  
9 questionnaire.

10 THE COURT: What I'm going to ask, there's only --  
11 I'm going to ask that the debtor undertake to revise the form  
12 consistent with what I've ordered on the record here today, to  
13 share that with all the parties that are here, no later  
14 than -- can we turn this around by the 11th? I want that  
15 filed here with the court with the proposed order, the order  
16 where we're going to have the dates. And make sure everybody  
17 is comfortable with the language. I want the order to also  
18 reflect that there's a confidentiality agreement that's being  
19 approved and that should also be attached. So I envision that  
20 there's going to be two exhibits attached to the order, one  
21 exhibit will be the questionnaire, and the second exhibit will  
22 be the confidentiality agreement. And then when you submit  
23 that order to me, assuming there are no objections, I can sign  
24 it. If there are going to be objections to it, we will have a  
25 conference call the week of the 17th so that it can be

1 finalized. If you're going to be sending it out on the 20th,  
2 when does it have to be finalized so they can be making  
3 copies?

4 MR. DEVEREAUX: The 18th should be sufficient, Your  
5 Honor.

6 THE COURT: If there is going to be any objection,  
7 those objections have to be filed by the 14th. As I've told  
8 you, if it's confidentiality problem, you're each going to  
9 file your version of the confidentiality and I'll accept one  
10 and attach it to the order, the one that I feel is best  
11 suited. I think to spend more time and energy dealing with  
12 this -- I think if you act reasonably, you should agree. And  
13 if you can't agree, then you have to take your best shot at  
14 what you think is the most reasonable approach and I'll pick  
15 one of them. If there's something where what I've ordered on  
16 the record, if it's not clear in terms of what should be in  
17 the questionnaire or what should be in the order, I will hear  
18 some very brief argument on that and we'll have a conference  
19 call, but it will be later in the day because I have trial the  
20 week of the 17th.

21 We'll do it on the 17th, no later than the 17th.  
22 So everything has to be circulated by the 11th from the  
23 debtors' point of view. Responses from the other parties have  
24 to be back to the debtor in sufficient time so by the 14th  
25 you'll know whether there's a problem.

1           If there is a problem, you'll have to advise the  
2 Court and we'll have a quick conference by telephone on the  
3 17th, probably around five o'clock.

4           MR. FINCH: One other issue on the timing related  
5 to the questionnaire. I believe this is implicit to the  
6 estimation. In addition to Rust by January 20th sending to  
7 the other parties whatever materials have been submitted to  
8 Rust, there was also a requirement that Rust create a  
9 database, a usable database of however they code that stuff.

10          THE COURT: There was a date set.

11          MR. DEVEREAUX: Forty-five days.

12          THE COURT: That should be in the order as well.

13          MR. DEVEREAUX: I indicated that was.

14          MR. KRESS: The debtors will transmit on the 11th  
15 will be the court order the questionnaire and the form of  
16 confidentiality agreement?

17          THE COURT: Yes. If you can be talking then, so if  
18 you can work out any problems that you think might exist, that  
19 would be advisable.

20          MR. DEVEREAUX: We will, Your Honor.

21          THE COURT: That will be the latest date to  
22 circulate that.

23          We need to talk about some timing. We've talked  
24 about the timing for this questionnaire. So I think we have  
25 that set and, again, it's with the understanding that if



1 there's a problem that comes up, the sooner I know about it,  
2 the better it will be in terms of revising the calendar, if  
3 that has to happen. So now we need to talk about the other  
4 discovery that's going on to get to the point where we can  
5 actually have the estimation hearing.

6 MR. DEVEREAUX: The other discovery that's going on  
7 right now, there's been a broad document request to the  
8 debtors and we have produced to date somewhere on the order of  
9 half a million or more pages and are reviewing, analyzing and  
10 producing on an every other week schedule the documents that  
11 have been requested. We spent four hours last week on a meet  
12 and confer talking about a variety of issues. My client has  
13 been asked -- I have been asked to find out certain  
14 information before types of documents that they would like to  
15 know how much you have of it, from what time frames do you  
16 have of it and I'm endeavoring to do that. There are some  
17 issues that we aren't in agreement on right now, and I suspect  
18 there will probably be some issues about the burdensomeness of  
19 what is being asked that we might not be able to agree to. We  
20 are scheduled to talk again, hoping to talk again next week on  
21 Tuesday where I'm going to report back to all the parties,  
22 letting them know what I've found out primarily about  
23 documents that exist related to cases previously filed against  
24 the debtors and in the tort system where settlements or trials  
25 or other results were reached.

1           That's the primary issue we're grappling with is  
2 what is the best way CFR would like to have a base of  
3 information about the way the tort system claims were handled.  
4 We want them to get that. We understand our obligation to  
5 make sure that they get that. That I don't think requires --  
6 just as we've chosen a sample of 2,000 people for the present  
7 claimants, we don't think that it requires or makes sense for  
8 the debtor to have to go try to identify hundreds of thousands  
9 of case files for claims filed back in 1980 through 2001, and  
10 so we're trying to find out what exists, what lawyers, outside  
11 lawyers have it and hopefully be able to reach some  
12 negotiation where they say, you know what we'd like, we'd like  
13 a couple hundred cases from these time frames of these types,  
14 and then work toward that. So there's a meet and confer going  
15 on about a variety of document issues and we're doing our  
16 best, but the other side, obviously, can and should comment on  
17 how they do that.

18           MS. PARVER: Thank you, Your Honor. Obviously, no  
19 one wants this fact discovery to go on ad infinitum at all.  
20 We have two very big problems here, Your Honor. That is,  
21 debtors won't tell us what they're going to produce and they  
22 won't tell us even as to the things they agree to produce when  
23 they are going to do it. This Court -- we've spent much of  
24 today, and I understand why, Your Honor, and we've spent much  
25 of the last time we were here, all focused on the debtors'

1 professed need for this sample, this discovery, and we've had  
2 a lot of papers filed about the standard of relevance, and how  
3 important it is to --

4 THE COURT: It's a two-way street.

5 MS. PARVER: You said that. What is happening,  
6 Your Honor, as soon as we're not in front of the Court, we're  
7 met with a big stop sign as soon as we try to go down the  
8 debtors' street. Now, we served a document request, Your  
9 Honor, and what we got back from them initially on September  
10 12th was, we couldn't possibly look at any outside counsel  
11 files because that would put us to the burden of having to  
12 figure out who our outside counsel were. I said to them, that  
13 doesn't meet the straight face test, that a legal department  
14 of a big corporation, which also had outside national asbestos  
15 counsel all those years, doesn't know the names and contact  
16 information of the law firms who handled the cases. They said  
17 to us, yes, we have all these resolved personal injury claim  
18 files, we shouldn't be put to the burden of looking at any of  
19 them and we're not going to. Remember, Your Honor, one of our  
20 big points is, the future builds on the history and resolved  
21 claim files are very, very important. So, we teed up a lot of  
22 these issues, Your Honor.

23 I haven't written these kind of discovery letters  
24 in a long time, Your Honor, but I wrote a four- or five-page  
25 letter to the debtors because Your Honor said very

1 specifically, meet and confer, Ms. Parver. Don't tell me  
2 there are problems now, meet and confer and try to work it  
3 out. The debtors asked to defer the meet and confer for  
4 another day. I sent the letter, very detailed and what we  
5 tried to do, Your Honor, is take their objections and say,  
6 okay, here's how we can deal with some of the objections, or  
7 here's what we'll propose, or here's what we'll accept your  
8 limitations on that. And we had the meet and confer on  
9 September 29th and at that point, we were told by the debtors,  
10 oh, so now we find -- no, we can't give you answers today  
11 because now we're sort of understanding what you want and  
12 we're just starting to look for things and we'll give you a  
13 progress report next week. Well, that week is this week, and  
14 focused as we were on the sampling things, whatever, the  
15 debtor said, we can't give you answers this week, but we'll  
16 have a meet and confer on the 11th.

17           And, Your Honor, during the course of the meet and  
18 confer on the sampling motion, the debtors had proposed that,  
19 gee, they would agree with us on the end of June as the end of  
20 fact discovery and that would resolve all the issues on the  
21 time and on the sampling motion, and I said to them, you know,  
22 that's all very reasonable. There's one problem. I can't  
23 commit, I don't want to agree -- if we agree now -- I said it  
24 very directly -- if we agree on an end date today before we  
25 have had this meet and confer, debtors are going to drag their

1 heels, Your Honor, on all of this stuff and we will not get  
2 any relevant documents until three or four months from now.  
3 They can talk all they want to about the 500 -- well, it's  
4 440,000 pages that got dumped initially, and we got CDs this  
5 morning of stuff.

6           What is interesting, Your Honor, is that on August  
7 4th, Mr. Devereaux sent us a letter, and among other things --  
8 August 4th, that's two months ago -- he said at that point, we  
9 have collected approximately 60 to 70 boxes related to the  
10 debtors' experience in the tort system generally and  
11 participation in the CCR and ACC specifically, and he said  
12 they were reviewing them currently and would produce them  
13 shortly. We haven't seen one box, Your Honor, of any  
14 documents related to the debtors' experience in the tort  
15 system, none of the depositions of their employees, nothing.  
16 Because what is clear is the debtors are giving us the --  
17 you'll excuse the expression, a truckload of nonconsequential  
18 documents. I think in the first, if we've gone through --  
19 there are 440,000 or 109,000 documents I think we have gone  
20 through, 70,000 of those in the first production, I think  
21 there are 50 documents my associates have collected as semi,  
22 lukewarm or hot documents. So you can imagine the types of  
23 stuff that we're getting.

24           We can't -- we need to know, Your Honor, when and  
25 what the debtors are producing. We do know that they have now

1 refused to produce any insurance coverage litigation files,  
2 Your Honor. These are files they first claimed burden because  
3 there are 350,000 pages to review, and they said, well, a lot  
4 is very confidential, very confidential.

5 THE COURT: I don't want to cut you off,  
6 Ms. Parver. I do have another hearing at three. Remember, I  
7 told you I had some time constraints.

8 I think, Mr. Devereaux, it is a two-way street.  
9 The debtor is going to have to accelerate, absolutely, the  
10 pace.

11 And Ms. Parver, what I want you to do is, if you  
12 feel that the debtor is dragging their feet, you file a  
13 motion, ask for an expedited hearing and I will get it to them  
14 and the debtor will have to come in and answer why they  
15 haven't done what they're obligated to do. It is a two-way  
16 street.

17 They need to get the historical information to make  
18 their case to this Court and just as I've given you the  
19 opportunity to get the information you need, you have to come  
20 up with that. And it's not the debtor they're saying can only  
21 have 100 files or 200 files, it's up to them to look through  
22 it to assess the magnitude and make a determination about what  
23 they feel is necessary for them. And if you still feel that  
24 that's a problem, you can come back here.

25 MR. DEVEREAUX: And I will, Your Honor.

1 THE COURT: I'll resolve it as quickly as possible.  
2 But they're entitled to it.

3 MR. DEVEREAUX: I agree with that. I'm not going  
4 to belabor a motion that's not before the Court, but let me  
5 say --

6 THE COURT: I can't address it here, but I do think  
7 it has to come quickly because time is marching on.

8 MR. DEVEREAUX: It is absolutely false to say that  
9 the debtor doesn't recognize this is a two-way street or that  
10 we're dragging our heels. I'm available Tuesday to meet and  
11 confer on documents they weren't --

12 THE COURT: I'm not assessing blame on anyone. I'm  
13 not going to have this as a forum for that. All I want to do  
14 is everybody understands this Judge's view of what is  
15 necessary. You're going to get what you feel you need to have  
16 to make your case. You need to get together. If it can't  
17 happen, just as they filed their motion here to have the  
18 questionnaire, you'll need to file a motion to compel the  
19 discovery.

20 MS. PARVER: Then, Your Honor, if the debtors won't  
21 give us answers on October 11th, we will move to compel on all  
22 those. We have notified the debtors that we will file on or  
23 before October 17th the motion on the insurance coverage  
24 litigation files. The debtors committed that when we gave  
25 them a date -- it was in that letter that I gave you at the

1 beginning --

2 MR. DEVEREAUX: At the break today. I haven't read  
3 it yet.

4 MS. PARVER: Your Honor, we're --

5 THE COURT: Everyone here is sensitive, I believe,  
6 to the fact that this case has to come to a close. And I am  
7 going to pick June 30th as the date Friday, June 30 of 2006.  
8 That will be close of discovery. Everybody has to work toward  
9 that date. If you cannot meet the date, you need to drag them  
10 in here so that we can make it happen. Because if I can  
11 facilitate the process and get the information so that it can  
12 be completed, that is what is appropriate. If for some reason  
13 that date has to drag, then someone needs to file a motion  
14 suggesting what the revised date should be and the reason why,  
15 in good faith, the parties couldn't meet June 30th.

16 MS. PARVER: Your Honor, you understand that the  
17 motion to compel I guess will also have to set dates by which  
18 the debtors are required to produce.

19 THE COURT: Yes, I understand.

20 MS. PARVER: We need time to read it.

21 THE COURT: I understand.

22 MR. FINCH: Your Honor, just so I'm clear, the end  
23 of fact discovery --

24 THE COURT: Look, before we move off of that,  
25 Ms. Parver, what you need to do with the debtor is you need to



1 say, I need this information by X date, Y date and Z date so  
2 that you've met and conferred before you file that paper.

3 MS. PARVER: I've told them which information,  
4 detailed in the letter today. I'll just tell them the dates,  
5 Your Honor.

6 THE COURT: Then you meet and confer about that if  
7 you can meet the date. If you can't, have a good faith reason  
8 why not, then you have to be in communication.

9 MR. DEVEREAUX: We will, Your Honor. I'll read the  
10 letter first.

11 THE COURT: It's best if everybody can work it out  
12 amongst yourselves because you know what your calendars are,  
13 you know what the pace of the work is. If you can't work it  
14 out, then bring it to me and I'll make a determination.

15 MS. PARVER: Your Honor, there is a little  
16 confusion about how we go about selecting a date because we  
17 thought we understood from what Your Honor had said at the  
18 last hearing what the procedure was, but when we called  
19 chambers to select a date to have the motion -- this is the  
20 motion on the insurance coverage litigation -- we were told  
21 first we had to file the motion and then a date would be  
22 selected.

23 THE COURT: There's a procedure that -- the Court  
24 has entered a special procedures motion in this case. I think  
25 you need to get a date.

1 MR. KRESS: Your Honor, your CMO says you obtain a  
2 date from the Court.

3 THE COURT: If it's our fault --

4 MR. KRESS: We tried that. I called personally and  
5 was told that no, first file your motion, the Judge will then  
6 read the motion and decide when the hearing --

7 THE COURT: There probably was confusion about not  
8 understanding this was something that there's a special order  
9 in. You do need to call. Ask for Ms. Gleason when you call.  
10 She's assigned to this case and she'll be familiar with that  
11 order. That's the way to get the date.

12 What we will do then, we'll have a conference on  
13 the 17th of July, that's a Monday.

14 What time is the best for you all? This is the  
15 meeting that we're going to come to after the close of the  
16 discovery part, the fact discovery part, then we're going to  
17 set the pace for the expert discovery, and by that time, you  
18 should come on that date with the list of your experts so  
19 we'll get a sense of the magnitude of the number of experts,  
20 and then you should be prepared that the initial expert  
21 reports are going to be due to be served on the other side by  
22 probably August 4th. It's usually about a month, 30 days  
23 after.

24 MR. NEAL: I'm sorry, Your Honor, can I ask one  
25 question? Is there any chance of doing it on a Tuesday? It

1 takes us a whole day to fly in from the West Coast, so if we  
2 do it on Monday, we give up a Sunday.

3 THE COURT: No problem. 2:00 p.m. on the 18th.

4 We'll set the schedule for the experts on that date  
5 and then we'll set the dates, because then by that time, we'll  
6 know how many experts you have to deal with, how many  
7 depositions you may have to take, and that will get us a good  
8 sense of what time we need before any Daubert hearing. I'm  
9 assuming there will be a Daubert hearing in this case, so I  
10 need to set this time aside.

11 MS. PARVER: Motions on discovery, Your Honor, we  
12 call your chambers to bring on expedited motions?

13 THE COURT: Yes. I don't do anything ex parte, so  
14 if you can't work something out, let the other side know, you  
15 try to call together and we'll pick a date and time that is  
16 convenient for everyone. If I'm there in the office and not  
17 on the bench, I can take the call right away. If there's a  
18 discovery dispute, you need to get each other on the phone to  
19 call.

20 MR. KRESS: It may make sense to move the July 18th  
21 hearing forward quickly, that there should be a date set for  
22 disclosure of experts.

23 THE COURT: Prior to that?

24 MR. KRESS: Yes.

25 THE COURT: How about the 7th of July? If fact

1 discovery is closing on the 30th of June, then July 7th would  
2 be the date for each side to exchange their list of experts.  
3 This would not be rebuttal experts, which would be your moving  
4 experts on your respective theories, so that would be -- that  
5 list should be exchanged on the 7th.

6 MR. FINCH: May I make one additional suggestion to  
7 the order for fact discovery is that a date be built in there  
8 by which parties identify fact witnesses they would likely  
9 call at the asbestos estimation hearing. There are hundreds  
10 of people with potential knowledge about various things.

11 THE COURT: Let me tell you what my practice is so  
12 you'll know what we'll be doing. Once we get through the  
13 expert Daubert hearing, then everybody will know what is going  
14 to be admissible and what is not admissible from the experts.  
15 Within two weeks after the Daubert hearing, the respective  
16 parties have to file the equivalent of a pretrial statement  
17 and in that pretrial statement, you will identify the  
18 witnesses that you intend to call, which would include any  
19 experts that you would intend to call, a brief summary of what  
20 case you would be putting on, any documents that you would be  
21 relying on. Those would be filed with the Court and  
22 exchanged. Then you'll have an opportunity, the respective  
23 parties, to respond to what has been filed. That's usually  
24 two weeks. Then you should be in trial in about a month.

25 MR. FINCH: What I was suggesting, Your Honor, I

1 understand the time at which you do disclosure, list of fact  
2 witnesses.

3 THE COURT: I see what you're saying if you want to  
4 take some --

5 MR. FINCH: If somebody shows up on a witness list  
6 right before trial --

7 THE COURT: I thought I had required you all to  
8 comply with Rule 26.

9 MR. DEVEREAUX: We have.

10 THE COURT: That's where you disclose -- it's an  
11 ongoing obligation. That's where you'll find out who they  
12 believe they have relevant information from. And if it  
13 doesn't show up on the Rule 26(f) disclosures as they roll on  
14 through the case, you're not going to be able to put that  
15 person on at the trial. That's the way it works here.

16 MS. PARVER: But, Your Honor, in the Rule 26  
17 disclosures from the debtor, for example, they said, we plan  
18 to put on a present or former employee to testify about X.  
19 And we have asked them to identify it, rather than require  
20 that person -- rather than require us to serve interrogatories  
21 for persons with knowledge, they come back with 30 people's  
22 names who might have knowledge about the subject, and  
23 rather -- since we're in a fairly expedited situation, make us  
24 take 30 depositions to find the one that they're going to put  
25 on for trial, that they tell us who they intend --

1           THE COURT: If you're willing to -- if you're  
2 willing to whittle down the list just to the ones they want to  
3 proffer as opposed to anybody that has relevant information,  
4 which is generally -- generally, if they felt there were 30  
5 people, they would give you 30 names and you could take  
6 whoever you thought was appropriate, but if you want them to  
7 narrow it down to who you would actually call at trial, to the  
8 extent they know it, because they may not -- this is the same  
9 problem you were raising with some of the discovery of the  
10 claimants, if you know who it is or if you have a range, a  
11 smaller number of the likely ones, then you have to disclose  
12 it. As soon as you know you're going to call somebody, then  
13 you have to give them the opportunity to disclosure.

14           MR. DEVEREAUX: We have actually given them the  
15 names of every expert we're going to call because we know who  
16 those people are. I don't know the people who may be fact  
17 witnesses, but I understand the continuing obligation.

18           THE COURT: You need to find them and you should  
19 have that to them let's say within 30 days.

20           MR. NEAL: That's a two-way street, too.

21           THE COURT: It's all a two-way street.

22           MR. FINCH: If you know in discovery, if somebody  
23 surfaces --

24           THE COURT: If somebody surfaces, it's an ongoing  
25 obligation. This is people under Rule 26. They want you to

1 whittle it down, they want those that are likely to be called.

2 MR. DEVEREAUX: I'll do that, Your Honor, but it  
3 also opens me up to criticism later on when I add somebody and  
4 they'll say, you should have known people would have  
5 information.

6 THE COURT: You give them everybody's name and you  
7 say these are the five that are the top five.

8 MR. FINCH: These are for fact witnesses. We'll do  
9 the same.

10 THE COURT: You can give 100 witnesses, but  
11 identify your top five picks.

12 MS. PARVER: Thank you, Your Honor.

13 THE COURT: Anything else today? Thank you.

14 (Court adjourned.)

15

C E R T I F I C A T E

16

17 I, Juliann A. Kienzle, certify that the  
proceedings foregoing is a correct transcript from the record of

18 in the above-titled matter.

19 s/Juliann A. Kienzle

20 Juliann A. Kienzle, RMR, CRR

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